EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

85-1378
85-1379

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

Supreme Court, U.S.
FILED
FEB 18 1986
JOSEPH F. SPANIOL, JR.
CLERK

Nos.

CHARLES A. BOWSHER, COMPTROLLER GENERAL OF THE UNITED STATES, APPELLANT

v.

MIKE SYNAR, MEMBER OF CONGRESS, ET AL.

UNITED STATES SENATE, APPELLANT

v.

MIKE SYNAR, MEMBER OF CONGRESS, ET AL.

THOMAS P. O'NEILL, JR., SPEAKER OF THE HOUSE OF REPRESENTATIVES, ET AL., APPELLANTS

v.

MIKE SYNAR, MEMBER OF CONGRESS, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOINT MOTION (1) TO CONSOLIDATE APPEALS, (2) TO EXPEDITE CONSIDERATION OF JURISDICTIONAL STATEMENTS, (3) TO ESTABLISH EXPEDITED SCHEDULE FOR BRIEFING AND ARGUMENT IF PROBABLE JURISDICTION IS NOTED, AND (4) TO PERMIT INITIAL FILING OF TYPEWRITTEN JURISDICTIONAL STATEMENTS AND RESPONSES AND REPLY BRIEFS

All parties to these appeals from the judgment of the United States District Court for the District of Columbia declaring unconstitutional provisions of the Balanced Budget and Emergency Deficit Control Act of 1985 move for adoption of a schedule and for other procedural actions that will permit the Court to expedite its consideration in order to dispose of the appeal during the Court's current Term. This

expedited treatment is justified by the text of the judicial review provisions contained in the Deficit Control Act, the interests of all parties, and the paramount national interest in a timely and orderly resolution of the constitutionality of the Act.[1/]

Consolidation of Appeals

This motion accompanies the jurisdictional statement filed today by the Comptroller General of the United States in docketing his appeals from the district court's February 7, 1986 judgment declaring provisions of the Deficit Control Act unconstitutional. The United States Senate and the Speaker and Bipartisan Leadership Group of the United States House of Representatives are each filing parallel jurisdictional statements in their independent appeals from the same judgment of the district court.[2/] These jurisdictional statements present a single, substantively identical constitutional question. Accordingly, in the interest of judicial economy, the parties move for the consolidation of all appeals.

Grounds for Expedition

Because Congress anticipated immediate challenges to the constitutionality of the Act, Congress included in the Act a provision, section 274, governing judicial review of these claims. Subsection (c) of this section provides that

---

1/ In order to permit the Court to consider this joint motion on an expedited basis, the parties move for leave to file this motion in typewritten form.

2/ The district court entered judgment in two cases, which it had consolidated for briefing and argument, Representative Mike Synar v. United States of America, C.A. No. 85-3945, and National Treasury Employees Union v. United States of America, C.A. No. 85-4106. The jurisdictional statements filed in the appeals from the judgment in the former case also cover the appeals from the judgment in the latter. See Sup. Ct. R. 10.6.

it is "the duty of ... the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a)." These appeals require expedited treatment because Representative Synar brought his complaint under subsection (a)(1), which authorizes members of Congress to bring actions seeking declaratory and injunctive relief on the ground that a presidential order that might be issued under the automatic reduction mechanism of the Act violates the Constitution. The action of the National Treasury Employees Union, which is also a subject of these appeals, see note 2 supra, was brought under subsection (a)(2), which permits actions by "any ... person adversely affected by any action taken under this title ... for declaratory judgment and injunctive relief concerning the constitutionality of this title."

Expedited treatment of these appeals would further the interests of all parties. First, the plaintiffs cannot obtain any relief until the Court finally disposes of the appeals. The district court declared the automatic deficit reduction process in the Act unconstitutional and the President's February 1, 1986 sequestration order without legal force and effect, but stayed the effect of its judgment during the pendency of any appeals from the judgment.3/ Second, the executive and legislative branches have a strong interest in an expeditious determinination of the constitutionality of

---

3/ This stay was required by section 274(e) of the Act, which provides that "[n]o order of any court granting declaratory or injunctive relief from the order of the President ... shall take effect during the pendency of the action before such court, during the time appeal may be taken, or, if appeal is taken, during the period before the court to which such appeal is taken has entered its final order disposing of such action."

the Act. As the conference committee that reported the final version of the Act to the Congress explained, "The Conferees want any constitutional issues to be decided as promptly as possible. If any part of the Act is not constitutional, it is in the interest of everyone in the executive and legislative branches as well as the public in general, to know this as promptly as possible." H.R. Rep. No. 433, 99th Cong., 1st Sess. 99-100 (1985). Accord 21 Weekly Comp. Pres. Doc. 1490, 1491 (Dec. 16, 1985) (signing statement of Pres. Reagan) ("It is my hope that these outstanding constitutional questions can be promptly resolved.").

The public interest strongly militates in favor of expedited resolution of these appeals. The district court's judgment invalidated both the automatic trigger mechanism under the Act and the first use of that mechanism on February 1, 1986 to sequester from outlay $11.7 billion of budgeted funds during this fiscal year. However, because the court stayed the legal effect of its order, this government-wide budget sequestration will take effect pursuant to the Act on March 1, 1986. The propriety and efficacy of this major reduction in government spending will remain uncertain until the Court completes its consideration of these appeals. Expedited consideration of the appeals is justified to reduce the impact of this instability as much as is possible.

The timing of the federal budget cycle under the Act provides an especially compelling basis for the Court to expedite the appeals in order to provide a final disposition of the constitutionality of the Act during its current Term. Under the automatic trigger mechanism contained in the Act, the Directors of the Office of Management and Budget and the Congressional Budget Office must submit a joint report on

August 20, 1986, projecting the size of th federal deficit for fiscal year 1987. The Act then requir the Comptroller General to submit a similar report to the . sident on August 25, 1986. Depending upon Congress' interim success in legislating a federal budget for fiscal year 1987 that meets the maximum deficit target provided in the Act, these reports may be followed by a second presidential sequestration order on September 1, 1986. Under the Act the President's order, if one is required to be issued, would trigger budget reductions effective on October 1, 1986. The public interest will be served by having the Court's judgment upon the constitutionality of the automatic mechanism in the Deficit Reduction Act in advance of the beginning of the fiscal year 1987 sequestration cycle this summer.

The Court historically expedites cases in circumstances such as these, when expedition is required to further national goals of overriding importance. See, e.g., Dames & Moore v. Regan, 452 U.S. 932, 933 (1981) (granting motion to expedite consideration of petition for writ of certiorari, certiorari, and request to expedite schedule); Buckley v. Valeo, 424 U.S. 213 (1976) (jurisdictional statement filed Sept. 19, 1975, probable jurisdiction noted Oct. 6, 1975, argument held Nov. 10, 1975); United States v. Nixon, 417 U.S. 927 (1974) (granting certiorari and motion for expedited schedule). Accordingly, the Court should expedite the disposition of these appeals.

Submission of Jurisdictional Statements

The parties jointly move for expedited consideration of the jurisdictional statements and responses. The three appellants are filing their jurisdictional statements on February 18, 1986, and the appellees intend to file their

responses on February 19, 1986. To permit these expedited filings, the parties move for leave to file their jurisdictional statements and responses initially in typewritten form and subsequently to file the statements and responses in standard typographic printed form. The Comptroller General requests leave to file the appendix to his jurisdictional statement, containing the opinion and order below and the constitutional and statutory provisions involved, in typewritten form and to print the appendix to the jurisdictional statement only if the Court does not note probable jurisdiction. If the Court notes probable jurisdiction, the parties move for permission to reproduce the district court's opinion and the constitutional and statutory provisions involved in printed form as part of the joint appendix to be filed with appellants' opening briefs on the merits, in lieu of printing them as an appendix to the jurisdictional statements.

Alignment of the Parties

The three intervenor-defendants below -- the Comptroller General, the United States Senate, and the Speaker and Bipartisan Leadership of the House of Representatives -- are the appellants in this Court. They seek reversal of the judgment of the district court invalidating the Deficit Control Act. The plaintiffs and defendant below -- Representatives Mike Synar, et al., the National Treasury Employees Union, and the United States -- are appellees seeking affirmance or vacation of the court's judgment.

However, beyond that fact, the alignment of the parties is less simple. First, if the Court notes probable jurisdiction, the plaintiffs-appellees intend to present as an alternative ground for affirmance other constitutional

arguments relating to the scope of the Act's delegation of authority, as well as a separation of powers argument based on the participation of the Congressional Budget Office in the process, both of which were rejected by the district court. The defendant United States will join the intervenor-defendants, who are defending the constitutionality of the Act against these challenges. Second, assuming plenary review is granted, the defendant United States intends to challenge the portion of the district court's judgment granting standing to one or both of the plaintiffs. Hence, while the plaintiffs and the United States are nominally appellees, they are in conflict on several fundamental questions. The proposed schedule for filing of briefs and the request for additional argument time reflects this situation concerning the parties' alignment.

Expedited Schedule for Briefing and Argument

In the event that the Court notes probable jurisdiction, the parties move for adoption of an expedited schedule for litigating these appeals, requiring briefs to be filed in the Clerk's office by 3:00 p.m. and served upon all counsel by hand by 5:00 p.m. on the following dates:

Appellants' opening briefs	March 19, 1986
Appellees' responsive briefs	April 9, 1986
Appellants' reply briefs; and appellees' reply briefs responding solely to briefs of other appellees on issues of standing, delegation, and the role of the Congressional Budget Office	April 16, 1986

The purpose for providing a limited right of reply to appellees is that the United States may wish to reply to the delegation and standing arguments presented by the plaintiffs-appellees, and the plaintiffs-appellees may wish to reply to the delegation and standing arguments presented by the United States. Because of the limited time between receipt of appellees' responsive briefs and the time for filing reply briefs, all parties move for leave to file their reply briefs initially in typewritten form on April 16 with printed submissions to follow on April 19.

Oral Argument

In the event that probable jurisdiction is noted, the parties request that oral argument be scheduled on April 23, 1986, or as soon thereafter as the Court's calendar permits. The parties move that the Court allot two hours to hear oral argument in these appeals. The significance of the constitutional question presented by the appeals and the magnitude of the impact of the resolution of that question merit the provision of two hours to hear the appeals. Compare Dames & Moore v. Regan, 452 U.S. 959 (1981) (allotting two hours for oral argument); Buckley v. Valeo, 423 U.S. 820 (1975) (arising under a comparable statutory provision for expedited review and allotting four hours for oral argument); United States v. Nixon, 417 U.S. 927 (1974) (allotting two hours for oral argument). In addition to the importance of the constitutional question decided by the district court, the differences between the parties on the issues of plaintiffs' standing and the constitutional legitimacy

of the delegation contained in the Act accentuate the need for two hours for oral argument.4/

Conclusion

For the reasons discussed above, the parties jointly move for the following procedural actions to expedite consideration of these appeals:

1. Leave to file this motion in typewritten form.

2. Consolidation of all appeals.

3. Leave to file jurisdictional statements and responses initially in typewritten form, with printed submissions to follow.

4. Leave to file appendix to jurisdictional statements initially in typewritten form, with printed submission to follow, as part of joint appendix if probable jurisdiction is noted, and independently if it is not.

5. Expedited consideration of jurisdictional statements.

6. Adoption of expedited schedule for briefing and oral argument.

7. Leave to file reply briefs initially in typewritten form, with printed submissions to follow.

8. Allotment of two hours for oral argument.

4/ The parties anticipate filing a motion at a future time to permit divided argument, as in Buckley v. Valeo.

Counsel for all other parties have authorized Michael Davidson, counsel for the appellant United States Senate, to affix their signatures to this motion.

Respectfully submitted,

Alan B. Morrison /s/
Alan B. Morrison
Public Citizen Litigation Group
2000 P St., N.W., Suite 700
Washington, D.C. 20036
(202) 785-3704

Attorney for Appellees Mike Synar, Member of Congress, et al.

Lloyd N. Cutler /s/
Lloyd N. Cutler
Wilmer, Cutler & Pickering
1666 K Street, N.W.
Washington, D.C. 20006
(202) 872-6100

Attorney for Appellant Comptroller General

Charles Fried /s/
Charles Fried
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2201

Attorney for Appellees United States

Michael Davidson
Michael Davidson
Senate Legal Counsel
642 Hart Senate Office Building
Washington, D.C. 20510
(202) 224-4435

Attorney for Appellant United States Senate

Lois G. Williams /s/
Lois G. Williams
National Treasury Employees Union
1730 K Street, N.W.
Washington, D.C. 20006
(202) 785-4411

Attorney for Appellee National Treasury Employees Union

Steven R. Ross /s/
Steven R. Ross
General Counsel to the Clerk
House of Representatives
H-105 The Capitol
Washington, D.C. 20515
(202) 225-9700

Attorney for Appellants Thomas P. O'Neill, Jr., Speaker of the House of Representatives, et al.

Dated: February 18, 1986

CERTIFICATE OF SERVICE

It is hereby certified that all parties required to be served have been served by hand delivery on February 18, 1986, with a copy of the Joint Motion (1) to Consolidate Appeals, (2) to Expedite Consideration of Jurisdictional Statements, (3) to Establish Expedited Schedule for Briefing and Argument if Probable Jurisdiction is Noted, and (4) to Permit Initial Filing of Typewritten Jurisdictional Statements and Responses and Reply Briefs.

Lloyd N. Cutler
Wilmer, Cutler & Pickering
1666 K Street, N.W.
Washington, D.C. 20036

Attorney for Appellant Comptroller General

Steven R. Ross.
General Counsel to the Clerk
U.S. House of Representatives
H-105 The Capitol
Washington, D.C. 20515

Attorney for Appellants
Thomas P. O'Neill, Jr., Speaker of the House of Representatives, et al.

Alan B. Morrison
Public Citizen Litigation Group
2000 P St., N.W., Suite 700
Washington, D.C. 20006

Attorney for Appellees
Mike Synar, Member of Congress, et al.

Charles Fried
Solicitor General
Department of Justice
Washington, D.C. 20530

Attorney for Appellee
United States